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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 PAMELA J. BAKER,

12 Petitioner,

13 v.

14 TINA HORNBEAK, Warden,

15 Respondent.

CASE NO. 09cv1025 BTM(AJB)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION, DISMISSING  
PETITION, AND DENYING  
CERTIFICATE OF APPEALABILITY**

16 Pamela J. Baker has filed a Petition for a Writ of Habeas Corpus challenging her state  
17 conviction and sentence. On November 18, 2009, Magistrate Judge Battaglia filed a Report  
18 and Recommendation that the Petition be dismissed because it was filed after the expiration  
19 of the one-year statute of limitations and it contains unexhausted claims. Baker did not file  
20 any objections to the Report and Recommendation but did file a motion on December 7,  
21 2009, seeking to stay the Petition so she could exhaust her claims.

22 The Court has conducted a de novo review of the Report and Recommendation and  
23 the relevant record and concludes that the Report and Recommendation properly applies the  
24 law to the record. Therefore, the Court **ADOPTS** the Report and Recommendation in so far  
25 as it recommends dismissal based on the statute of limitations. The Court **ORDERS** as  
26 follows:

27 (1) The Petition for Writ of Habeas Corpus shall be **DISMISSED** with prejudice as filed  
28 beyond the one-year statute of limitations in 28 U.S.C. § 2244(d);

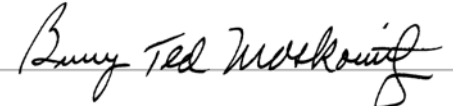
1 (2) The motion for a stay captioned as "Motion Requesting a Protective Petition" [Doc.  
2 No. 18] is **DENIED** as moot;

3 (3) The Court **DENIES** a Certificate of Appealability.

4 The Clerk shall enter a final judgment accordingly.

5 **IT IS SO ORDERED.**

6 DATED: January 27, 2010

7   
8 Honorable Barry Ted Moskowitz  
9 United States District Judge